Proliferation of Contingent Protection among Developing Countries:
Causes and Consequences

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This paper was prepared while I was a visiting scholar at the International Monetary Fund. Given the circumstances in New Orleans at the time, I am exceptionally grateful for the hospitality of the IMF and its staff (especially Bob Flood who arranged everything, and Shang-Jin Wei who was an admirable host). In the preparation of this paper I received a number of very helpful comments and would like to acknowledge: Mike Finger, Mike Moore, Tom Prusa, Stephen Tokarick, Tim Wedding, and Shang-Jin Wei.

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As with the wave of interest in the 'new protection' in the 1970s, we are now observing a new wave of concern with a rapid increase in the use of 'non-traditional' protectionist instruments (e.g. Prusa, 2001; Zanardi, forthcoming). Once again, the main culprit is contingent protection (primarily anti-dumping and countervailing duties, though voluntary export restraints—mainly coming from the safeguards process—also figured prominently in the 1970s).[1] The main difference is that in the 1970s the main users were industrial countries (mainly the US, EU, Canada, and Australia), the millennial *new* users, and the main source of growth in use, are developing countries and countries in transition (Argentina, Brazil, Mexico, South Korea, Taiwan, Turkey).[2] This note first considers why proliferation might be a problem, second evaluates the domestic and international causes of proliferation, and third evaluates the consequences of proliferation for the liberal trading system.

Before turning to a discussion of the main issues, we can fix the essential facts with two figures drawn from Zanardi (forthcoming). Figure 1 shows the strong upward trend in investigations and figure 2 shows a more modest growth in the number of antidumping orders in place. What both figures make clear, however, is that while there may be some downward trend in use of contingent protection by traditional users, the

[1] These forms of protection are "contingent" because they are dependent on a quasi-judicial/bureaucratic finding prior to application of the protection. By contrast, traditional protection is "statutory", i.e. it is applied in every case, without any such finding. The sources of concern, which we treat in detail below, are that contingent protection is substituting for statutory protection in ways that are inconsistent with the liberalization goals of the WTO—we will respect to this problem we will refer to the elasticity of substitution between contingent and statutory protection induced by liberalization—and that contingent protection might actually be "worse" than statutory protection in some well-specified way.

[2] Note that the industrial countries continue to be quantitatively the biggest users, but growth in use is coming from developing countries.

trend in new users is strongly upward. Table 1 provides some country detail. It is clear that the new users are drawn from nearly the full range of WTO members (the exception being small, poor countries). This suggests the potential for very wide adoption and use of these mechanisms. While the spread of contingent protection mechanims, and their use, is an undeniable fact, the normative implications are considerably less clear. One of the primary conclusions of the analysis in this note is that we cannot evaluate those normative implications without a clear sense of the link between contingent protection and the general liberalization of trade.

I. Why we should worry about contingent protection?

The first thing to note, of course, is that contingent protection is protection.[3] As with all other forms of protection, there are a variety of strong cases to be made against protection as a policy instrument for most uses.[4] In particular, protection distorts incentives leading to suboptimal use of scarce national resources. Especially in the context of very low statutory rates of protection, the often very high rates of contingent protection can imply substantial distortion. However, the measured aggregate effects are rather low. Rough and ready analyses for the case of the US suggest that the welfare cost of antidumping may be as high as $2-4 billion for the US in 1993 (Gallaway, Blonigen, and Flynn, 1999). This is hardly surprising since the amount of trade directly affected by contingent protection is quite small—less than 5% of trade flows. If foreign firms/governments use their contingent protection mechanisms to retaliate, or if we include resources spent in

[3] In fact, for all the usual equation of "new protection" with "non-tariff barriers" or "non-traditional protection" in the earlier literature, the main form of protection is duties. This is even more true now with agreements to forgo voluntary export restraints. As we note above, the essential distinction is between statutory and contingent (or, in the US context, "legislated" and "administered") protection.

[4] This is one implication of the theory of economic policy as applied to trade. Bhagwati, Panagariya and Srinivasan (1998) provide a standard account.

protection seeking, these static costs will be even higher.[5] In addition to such static effects, distortion of incentives leads to well-known, but harder to estimate, growth effects that may well be of substantially greater magnitude.[6]

Beyond the standard problems with protection, there are two classes of issue more-or-less unique to contingent protection: one directly related to its contingent nature; and a second related to its firm-specific nature. Because contingent protection is contingent on an administrative decision, it is in its nature uncertain. While the general rules are relatively well established in the WTO agreement on antidumping, there is clearly a non-trivial degree of discretion and uncertainty. Most accounts suggest that this discretion is greatest in the calculation of dumping margins and, since these dumping margins seem to affect the outcome of the injury decision as well, the overall process seems characterized by a non-trivial degree of uncertainty.[7] Otherwise there would be considerably fewer cases—foreign firms certain to receive antidumping orders and thus higher duties would simply price higher (avoiding the bureaucratic and legal costs involved); [8] while domestic firms certain of losing a case would be less likely to file.[9]

[5] As with the literature on protection generally, the magnitudes of these effects are unknown and tend to be used in the literature more as rhetorical devices that inflate the costs of protection than serious subjects of study.

[6] However, given the tightly focussed and relatively narrow application of antidumping, these growth effects are likely to be modest.

[7] Several of the papers collected in Boltuck and Litan (1992) emphasize both arbitrariness and bias in methods used to determine the dumping margin. While some of the most spectular instances have been curbed since the Uruguay round and WTO antidumping agreement, this is still a major source of criticism of the antidumping mechanism (Lindsay and Ikenson, 2003). Recent research by Blonigen (forthcoming) attempts to empirically identify the role of discretion in the steadily increasing dumping margins and finds evidence of continuing protectionist discretion. One of the major reasons that many lawyers and economists would prefer to eliminate antidumping in favor of exclusive use of safeguards is that the latter mechanism does away with the less-than-fair-value pricing determination to focus exclusively on the injury decision. However, it should be noted that the injury decision is not itself free from criticism.

[8] There is annecdotal evidence that firms do, in fact, price in such a way as to insure against being involved in the antidumping process, but beyond the claim there is little evidence (even anecdotal) about the extensiveness of this practice or the magnitudes involved.

[9] There is some evidence of a harassment motivation—though the most sophisticated attempt to identify such a movivation found only a very small number of cases of this sort (Staiger and Wolak, 1994, 1996).

Uncertainty of market access (or the terms of market access) acts as a frictional barrier to trade, distorting the terms of competition and leading to inefficiencies in allocation and income distribution effects essentially the same as those induced by tariffs.

Since antidumping cases are filed on firms, not only is this form of protection a violation of the non-discrimination norm so central to the WTO (unlike, say, safeguards under Article XIX of the GATT), but it opens the door to strategic manipulation in ways that are less plausible in the context of statutory protection. Much contemporary research, both theoretical and empirical, has focused on the strategic elements of administered protection, concluding that the costs of administered protection are probably far in excess of those implied by simply looking at amounts of trade covered by dumping orders and levels of protection in those lines.[10] One channel through which the presence of a contingent protection mechanism affects outcomes, even if we do not observe cases filed, is that firms may alter their strategic behavior to take into account the possibility of filing a case. Because such behavior distorts the allocation of resources, it has been called indirect rent-seeking (Leidy, 1994). For example, foreign firms may compete less aggressively so as to avoid an anti-dumping complaint. In addition to changing the terms of non-cooperative interaction between home and foreign firms, it is also quite possible that the presence of contingent protection may support collusion among home and foreign firms where, once again, we need not observe contingent protection in equilibrium. Given the number of potential strategic variables and market structures, it is probably not surprising that virtually any outcome is possible here. While there is some, usually rather indirect, evidence that such collusion may be present, identifying magnitudes (or even direction of effect) has proved virtually impossible.

[10] Surveys of this work can be found in Blonigen and Prusa (2003) and Nelson (forthcoming).

While this work is clever and suggests a warning that standard measures of cost of protection *may* be substantial underestimates of those costs, it is important to recognize that there is virtually no compelling empirical work here. In fact, there is a somewhat awkward tension between this conclusion and the work, from an anti-trust perspective, which suggests that most cases could not pass a first-stage Joskow-Klevorik predation test (Shin, 1998).[11] That is, most cases do not seem to involve the kind of market structure that would permit anti-trust action. It is possible that it is the cases not filed (i.e. cases in which the presence of the threat of an antidumping case supports collusion), really do yield high costs, but this seems improbable. It is ironic that, in a literature that stresses the disconnect between norms in anti-trust and norms in contingent protection, the implicit presumption among anti-dumping scholars is the Harvard presumption (i.e. that markets are presumed imperfectly competitive—mainly because this raises the costs of anti-dumping), rather than the Chicago presumption (i.e. that the market is presumed competitive).[12]

II. Explaining proliferation

In explaining proliferation it is important to distinguish the adoption of contingent protection mechanisms from the pattern of use of those mechanisms. Both adoption and use have grown dramatically in developing and transition countries. In principle, either

[11] The Joskow-Klevorik (1979, part III) approach to testing for predation is a two-step process in which the first step seeks to determine whether the industry structure in question would be likely to support predation and whether the firm in question possesses market power in that context. Specifically, the first stage looks at factors supporting short term monpololy power (concentration, market share of the firm in question, price leadership, supernormal profits, etc.); conditions of entry (e.g. minimum efficient scale, actual entry in recent years, price premia, etc.); dynamic effects of competition on costs. If the first hurdle is cleared, then a rigorous analysis of pricing in the industry is pursued with a focus on pricing behavior of the firm.

[12] The "disconnect" emphasized in this literature is between anti-trust's focus on predation (a well-specified concept with relatively clear empirical content—e.g. the Joskow-Klevorick rule) and contingent protection's emphasis on "fairness".

may have domestic or international foundations. Our understanding of those foundations may take the perspective of the government (as a social welfare maximizer, loosely speaking) or social pressures on the government. However, sometimes the adoption decision seems straightforwardly to be made by governments acting in a relatively unconstrained way as part of the accession decision and the need to sell that decision to domestically influential parties. That is, contingent protection is seen as a *quid pro quo* for liberalization of statutory protection. Such a connection is well-embedded in both the domestic and international normative structures that support liberal international trading relations. Domestically this is what has sometimes been called the "no serious injury norm". That is, domestic interests are assured that, while there will be adjustments, no domestic industry/interest will suffer serious injury. At the international level, contingent protection is seen as a "sovereignty norm".[13] As an organization made up of sovereign nations, the architects of the GATT/WTO system recognized the need to balance the needs facing sovereign nations (sovereignty norms) with the gains to be had from collective liberalization ("interdependence norms").

The existence of an organic link between liberalization decisions and the adoption and use of contingent protection mechanisms is widely believed in the trade policy community and seems broadly consistent with informal empirics. For example, Figure 3 shows the close relationship between accession and adoption of an anti-dumping mechanism that has led many specialists to suggest a causal connection (e.g. Miranda, *et al.*, 1998; Lindsay and Ikenson, 2001), however, systematic emprical evidence for this connection is much harder to find. One rare attempt is a recent study by Feinberg and

[13] Finlayson and Zacher (1981) were the first to develop an analysis of the GATT's normative structure in terms of the need to balance gains from interdepenedence against the demands of national sovereignty.

Reynolds (2005), who attempt to identify the probability of filing an antidumping case (in a probit framework) using data on 24 importer countries in which antidumping cases were initiated against 83 exporters in 19 industry categories from 1996-2003. The variable of relevance is the degree of liberalization in the relevant industry category, with the hypothesis being that the probability of initiation increases with the degree of liberalization, controlling for other standard explanatory variables (and a full set of country and time fixed effects). The authors find a small, but statistically significant, effect.[14] That is, the authors find that, the more a sector has been liberalized, the greater is pressure for antidumping protection in that sector.

In a sense, what Feinberg and Reynolds show is that the sort of pressure that a contingent protection mechanism is supposed to respond to actually exists. These results do not tell us about substitution. That is, they do not tell us whether countries end up with more or less protection as a result of liberalizing statutory protection and implementing contingent protection. Two sorts of results using the gravity model framework are relevant here.[15] Vandenbussche and Zanardi (2005) find that developing and transition countries that use antidumping relatively aggressively ("new users") experience lower trade than would be predicted without such protection. That is, they find that protection suppresses trade. Somewhat closer is work asking whether membership in the GATT/WTO actually leads to liberalization. If WTO membership leads to increased trade, it would be hard to argue that (at least for those countries that

[14] With respect to the size of the effect, Feinberg and Reynolds's maximum estimated increase in the probability of filing is less than 7%. Since the probability of filing a case is, in any event, low—cases are filed on 0.5% of caes—this increase does seem small. Though, given high levels at which tariffs are bound in most developing countries, it is not surprising that these magnitudes are small.

[15] The Appendix to this note provides a somewhat more detailed discussion of this work.

adopted a contingent protection mechanism) substitution was greater than unity.[16] Unfortunately, the work here yields mixed results. Rose (2004a) finds that membership does not increase trade or lead to more liberal trade regimes (Rose, 2004b). These results seem potentially consistent with a substitution of unity. By contrast, Subramanian and Wei (2005) find evidence of liberalization by focussing on the sectors and countries that have experienced GATT/WTO sponsored liberalization. Relative to Vandenbussche and Zanardi, Subramanian and Wei provide evidence that liberalization increases trade.

While the adoption of contingent protection seems straightforward, and relatively uncontroversial, explaining the use of these mechanisms is considerably more complex. We will consider domestic accounts first and then international accounts.

A. Domestic explanations of proliferating use of contingent protection

Most research on the political economy of administered protection suggests that outcomes respond to some combination of the statutory language and forces identified in general research on the political economy of protection. It is important to understand that the statutory language under which contingent protection is granted is itself set in a political process. At least in the US, which has been most extensively studied, this indirect source of political pressure seems to be the most significant. That is, the agencies administering the antidumping and countervailing duty laws seem to be acting within the terms of their legislative mandates. Given that contingent protection is protection, the real question would seem to be the degree of substitution between statutory and contingent protection.

[16] Vandenbussche and Zanardi do find a positive effect of WTO membership and no effect of adoption of antidumping, but do find a negative effect for countries that become major users. However, for this latter group they don't identify a net effect.

For industrial countries the answer seems to be that this degree of substitution is considerably less than 1. That is, even taking into account contingent protection, the average level of protection in industrial countries under the GATT/WTO-contingent protection regime is far smaller than under the statutory protection regime that preceded it. Why this is the case is still not particularly well-explained, however it is clear that a structure which grants protection only under general rules committed to in a widely accepted international agreement, has a built-in level of commitment to liberalization not shared by the previous regime.[17]

The case of developing countries need not follow the experience of the industrial countries. In many cases, the switch will not be from statutory to administrative protection, but from one set of administrative mechanisms to another. It is possible, for example, that substituting a centralized mechanism for a decentralized mechanism will lower the cost of protection seeking, resulting in increased protection. However, at least for the case of Latin America, the results of a recent project organized by J.M. Finger and Julio Nogues (forthcoming), suggests that, as with the industrial country experience, the adoption of GATT/WTO-consistent contingent protection regimes has also involved the adoption of discipline in those regimes that did not exist in the regimes which preceded them. In fact, and contrary to the scenario sketched at the beginning of the paragraph, the decentralization of protection among a number of industrial, trade, and finance ministries, simply led to sector-specific capture more-or-less equivalent to the private capture of the

[17] It also appears to be the case that, where the previous regime granted protection essentially as a private good to industries, lobbying for the rules regulating contingent protection is a public good problem that tends to dis-organize the relevant politics. Hall and Nelson (1992) develop a formal analysis of this logic.

tariff-making process in the US prior to the Reciprocal Trade Agreements Act of 1934.[18] Thus, while usage of contingent protection by developing countries has risen, it seems possible that, as with the industrial countries, the substitution of contingent protection for statutory protection is considerably less than one.

Perhaps more importantly, Finger and Nogues make clear that contingent protection was an important instrument in the hands of liberalizers. In constructing these mechanisms, the liberalizers hoped to both: protect liberalization from short term political changes by keeping liberalizers in power; and to constrain protectionists by limiting both lower level discretion in interpretation of commitments and the proliferation of low-level administrative instruments. As a result, at least in the Latin American cases studied by Finger and Nogues (and their collaborators), contingent protection was used to flexibly provide short-term protection during periods of macroeconomic instability of the sort that had previously led to retreat from liberalization. Thus, while it seems clear that in the hands of liberalizers, the discipline involved in WTO commitments and reporting requirements produces stably lower protection, it is not clear what will happen in the context of a shift to traditional populists occur. Nonetheless, so far, at least at the domestic level, contingent protection seems to be a support of liberalization.[19]

It is worth noting that, for all the concern among economists about the "new protectionism" (i.e. contingent protection in industrial countries) in the 1970s, the liberalization process continued in those countries. The failures of liberalization (e.g. agriculture, textiles and apparel) were not associated with contingent protection; while

[18] This picture of highly fragmented protectionist regimes is consistent with a recent paper by Mobarak and Purbasari (2005), which suggests that the Indonesian regime involved firm-specific links based on personal connections between entrepreneurs and politicians.

[19] It is interesting to note that this same link, between antidumping and liberalization, was present in Canada when it adopted the first antidumping law in 1904 (Viner, 1923).

the most spectacular instances of contingent protection (e.g. automobiles and steel) were constrained by the process and, at least in the case of automobiles, were ultimately reversed. Our discussion of the spread of antidumping to developing countries should focus on plausible probabilities instead of worst case scenarios, and in that context it is far from clear that the spread of contingent protection to developing countries constitutes any more of a threat to liberal trade than did its use by industrial countries.

B. International Politics and the Proliferation of Contingent Protection

One issue that has been raised in a number of recent papers is the possibility that the proliferation of contingent protection reflects, at least in part, a process of retaliation among users. While there is some weak empirical evidence supporting such retaliation, in its nature it tends to be indirect. In theory there are two main channels. The first considers government-to-government retaliation. The main problems here are that cases need to be initiated and determined according to reasonably well-specified rules, and that there seems to be no direct evidence of such retaliation.[20] An alternative approach considers retaliation emerging from firm-level strategic interaction. The idea here is that if, say, a Mexican industry is filed on in the US, and Mexico is a major export market for the US industry, the Mexican industry might file on the US industry (and the antidumping authority might be more willing to consider an affirmative finding in the context of a standing antidumping order, or an ongoing case, against Mexican firms in the US). This mechanism is certainly more plausible, but there seems to have been no effort

[20] There does, however, appear to be some informal evidence that one of the factors leading to the adoption of contingent protection mechanisms is a more-or-less direct signal to developed country users that they can retaliate against use by those countries (Finger, personal communication).

to identify how many sectors might meet the conditions necessary to the operation of this channel.[21]

Overall there would seem little to distinguish retaliation from straightforward contagion. In either case, it seems plausible that this spread might lead to a greater willingness of traditional and new users to consider greater multilateral discipline in the use of contingent protection.

III. Contingent protection and the liberal trading system

As we have stressed throughout this note, protection is *per se* inconsistent with a liberal trading system. However, we have also noted that, in the real world of sovereign nations (whose governments face domestic political constraints) that make up the Liberal trading system, a standard of purity can stand in the way of practical movement toward Liberalization. This is the essential insight of the balancing of interdependence and sovereignty norms at the heart of the GATT/WTO system.[22] Given the difficulty of such a balancing act, it is not surprising that in the current round of WTO negotiations, there are a number of proposals for reforming the system of contingent protection.

Finger and Zlate (F/Z, 2005) provide a very useful analysis of the prospects for reform of antidumping in the Doha round. As part of this analysis they tabulate the major

[21] Informally, we might see the tendency of cases to cluster in sectors like petrochemicals and steel as evidence of retaliation. A number of recent papers have sought to econometrically identify retaliation in the data, including Prusa and Skeath (2002) and Feinberg and Reynolds (forthcoming). However, it is not clear how these results relate to the work of Blonigen and Bown (2003) who find that the potential for retaliation reduces filings.

[22] One of the standard arguments for the success of the GATT was the way it harnessed mercanilist logic (i.e. reciprocity) to the porgramme of liberalization. One way of understanding contingent protection is as the domestic face of exactly the same political trick. That is, by explicitly recognizing a widely held concern about fairness, the system of liberalization has produced a truly striking level of liberalization.

proposals for reform (reproduced here as Table 2). [23] Most of these proposals constitute efforts to fine tune the existing system (what F/Z call "thinking within the box"), with some proposals seeking to impose additional discipline on the determination of dumping and the margin as well as the the injury decision, impose greater clarity on a number of technical issues relating to the process of investigations (e.g. *de minimis* rules and standards of evidence) and its aftermath (e.g. rules regulating price undertakings, collection of duties, and retroactivity); standards of administrative and judicial review; and dispute settlement. From an institutional design perspective, as F/Z point out, even if all these proposals were adopted, there is sufficient discretion in the system that there need be no effect on patterns of filing or outcome. This is not to downplay the importance of such reforms in the context of a system which has become increasingly about rules and decreasingly about negotiation. From the point of view of both domestic and international legitimacy, it is increasingly important that contingent protection be seen to operate in a transparent and consistent fashion. The point is merely that the system will continue to *be* an antidumping system and will continue to generate protection.

For many trade lawyers and economists, such tinkering at the margin is unsatisfactory. They would prefer to see some more fundamental reform. However, as long as the substitution of contingent protection for statutory protection remains well below unity, the design focus should be on how to insure the stability of the system, not

[23] Gary Horlick and Edwin Vermulst organized a project in which trade lawyers from 10 major user countries identified "10 major problems with antidumping" in their country. The countries were: Australia, Brazil, China, the European Community, India, Indonesia, Mexico, South Africa, Thailand, and the United States. Horlick and Vermulst (2005) summarizes the results and acts as an introduction to the special issue of the *Journal of World Trade* presenting the individual papers. The issues identified for the specific countries provide interesting supplementary detail to the overview provided by Finger and Zlate.

on how to undermine it. In thinking about reform, most trade lawyers and economists think in terms of transition to a protection free environment, or at least an environment of unconditional non-discrimination. The possibility of unconditional non-discrimination suggests substitution of safeguards for anti-dumping/countervailing duties, the proponents of protection free environment hold out the possibility of the use of anti-trust. In both cases the attraction lies in the imposition of greater discipline (multilateral and domestic judicial, respectively) and, presumably, lower protection. Neither approach is without risk.[24] Most obviously, if it is, in fact, the case that contingent protection supports liberalization, a change in institutional arrangements that fails to deliver the politically appropriate level of protection may lead to pressures for either a return to less regulated forms of protection or a transformation of safeguards or antitrust.

The concern with a switch to safeguards is that precisely the disciplines that recommend it to most economists (MFN consistency, no less-than-fair-value/margin decision, strictly time limited application, Executive discretion, need for an adjustment plan, payment of off-setting concessions) are those that reduce its flexibility as a source of protection. At the same time, if safeguards were to replace antidumping, and if they generated sufficient protection to insulate the liberalization process from domestic political pressure, virtually all of the arguments currently applied against antidumping (with the exception of inconsistency with MFN) would be applied against safeguards. After all, recall that most affirmative findings of injury are inconsistent with standard methods for evaluating antitrust.

There are similar concerns with a switch to antitrust. Specifically, antitrust focuses directly on predation (and closely related concenrns) and, as we have already

[24] Moore and Suranovic (1992) illustrate this risk in a simple political economy model.

noted, most antidumping cases would not pass a any standard predation test.[25] This suggests that if 'antidumping' had been handled by the competition authority, under essentially the same rules as applied to domestic antitrust cases (e.g. under some kind of national treatment), considerably less protection would have resulted. However, if contingent protection actually does support liberalization, this may not be a good thing. There is an additional problem with attempting to use competition policy, and that is the politicization of antitrust. Domestic competition policy is widely seen as a broad area in which the regulatory bureaucracy and the judicial branch now apply sensible economic analysis relatively free from strong political pressure.[26] Pushing politically problematic trade issues into the generally well-functioning antitrust mechanism seems at least as likely to undermine the sensible operation of antitrust as to discipline trade protection.

The case of antitrust enforcement is an interesting one in this context. Antitrust enforcement in the US was a classic example of Bernstein's (1955) "regulatory lifecycle" but ultimately made the transition to a regulatory/judicial regime that, for most economists, and contrary to the lifecycle model, comes close to the Weberian ideal.[27] The proximate cause was the increasing economic sophistication of the judiciary (an example of elite learning), but we still lack an account of how this happened beyond

[25] In antitrust law, as in the more general analysis of industrial organization, there is nothing *per se* problematic about price discrimination. Domestic firms are allowed to offer different prices in different markets for a variety of reasons—sales to enter new markets or smooth competition, discrimination among classes of consumer (senior citizen and student discounts), etc. Since much dumping is simply price discrimination, like the evolution of economic thinking on anti trust, one of the sources of concern among economists is that there is no real warrant for *anti* dumping if it is not associated with predation.

[26] Note the modifier, I am not turning Pollyanna here.

[27] Bernstein's life cycle model is a sophisticated version of capture theory: in the first stage, public pressure for political response builds up, ultimately resulting in legislation creating a regulatory entitiy; the next stage involves aggressive pursuit by the agency of its commission in the context of high public and Congressional attention; as the public and Congress lose interest, the agency reaches a more cooperative relationship with the industry it is supposed to regulate; finally becoming an active protector of the industry. By contrast, Max Weber conceived of an ideal state, pursuing policy broadly in the public interest.

fairly straightforward triumphalism. A better understanding of this transition via positive political economy would be of enormous value in moving toward a more well-founded contingent protection mechanism.

Similarly, our understanding of the generality and stability of the Latin American experience studied by Finger and Nogues (and their collaborators) is a matter of some importance. It is clear that trade liberalization in those cases did not occur in a vacuum, but was part of a process of general liberalization that involved both an elite consensus on the need for change, genuine political bravery by early liberalizers (Harberger's "handful of heroes"), and, at least in some countries, the emergence of a public acceptance of the need for reform. In addition to clever use of contingent protection in the face of macroeconomic disequilibrium, in several countries building this support also involved selective liberalization. In particular, the exclusion of agriculture from liberalization appears to have played an important part in building such support. We would benefit from more detailed studies of antidumping in such major users as China, India, and some of the new users in eastern Europe.

A second fundamental gap in our positive political economy of contingent protection is the way it relates to concerns about fairness in the public discourse about trade policy. It seems clear that in the industrial countries that have gone farthest in liberalizing, and contrary to most political economy models, that success rested fundamentally on trade policy ceasing to be a public political issue and on an elite consensus that liberalization was in the national interest. Just as the economic foundations of antidumping are weak (or non-existent—especially by comparison with modern antitrust analysis), the language of fairness in antidumping (by comparison with

safeguards) strikes many economists as profoundly objectionable. The irony here is that, given the widespread public perception of unfairness in international competition, the presence of a mechanism that not only asserts itself to be about fairness, but actually takes action in the name of fairness, may be one of the most effective protectors of liberalization. This could be utterly wrong, but it is hard to connect claims that contingent protection yield very high and effective protection essentially free for the asking with the relatively small amount of action in these mechanisms and the historically liberal trade regimes in place in most major trading countries. At a minimum, we need a much clearer understanding of how the public politics of liberalization are linked to widely held notions of fairness and linked, or not linked, to final decisions made about trade policy.

Precisely because it is protection and because it is inconsistent with MFN commitments, it behooves us to keep a close eye on the implementation of contingent protection mechanisms (in both traditional and new users). Scrutiny by the WTO and by the economics profession surely has the salutary effect of raising the political cost of extravagant violation of a country's WTO commitments. It also seems clear that there are considerable benefits from continuing efforts to educate elites about the negative consequences of protection, both for national economies and for the Liberal order that supports expanding trade and its many benefits. At the same time, we need to ground our normative conclusions about contingent protection in better positive analysis of its place in the political economy of Liberalization.

Appendix:
GATT/WTO Liberalization and Protectionist Response:
Evidence from the Gravity Model?

The gravity model has proved to be an effective framework for prediction of trade and, thus, for evaluation of the effect of various forces on trade. We start by recalling *Newton's universal law of gravitation*, that every body in the universe attracts every other body according to the relationship:

$$F_{ij} = G\frac{m_i m_j}{d_{ij}^2};$$

where F_{ij} is the gravitational force between two bodies, m_i and m_j are the masses of the two bodies, d_{ij} is the distance between the bodies, and G is the universal gravitational constant. For something over a century, economists have recognized that it is straightforward to interpret mass as economic size (i.e. GNP), and "force" as any number of economic flows between countries (immigration, trade, etc.). This log-linear form, extended to include a variety of potentially relevant additional factors, then lends itself easily to estimation using standard methods. In recent years there has been something of a boom in both applications and the development of the relevant economic and econometric specification of these models.[28] Much of this recent work has focussed on the use of panel data, for which the most general version of the standard model would be (Baltagi, Egger and Pfaffermayr, 2003):

$$y_{ijt} = \mathbf{x}_{ijt}'\delta + \alpha_i + \beta_j + \gamma_t + (\alpha\beta)_{ij} + (\alpha\gamma)_{it} + (\beta\gamma)_{jt} + \varepsilon_{ijt},$$

[28] Anderson and van Wincoop (2003) is particularly important here in illustrating the role of multilateral trade resistance in understanding and estimating a gravity model. As a practical matter, given the unobservability of the multilateral resistance terms, and problems with implementing the strategy they develop in detail, Anderson and van Wincoop suggest a country fixed effect estimator. Interestingly, it is this practical suggestion, and not the details of the nonlinear least squares estimator they derive from the theory, that seems to be the main lesson taken away from this important paper (e.g. Feenstra, 2002).

where all variables are in logs, y_{ijt} is exports (or imports) from country *i* to country *j* at time *t*, $\mathbf{x}_{ijt}$ is a vector of explanatory variables (e.g. gdp, population, gdp per capita) , exporter (α_i), importer (β_j), and year (γ_t) fixed effects, and then a full set of interaction effects. The first of the interaction effects are time invariant interaction effects, while the second and third capture importer and exporter time-varying effects (e.g. business cycle, partisan, cultural/taste, etc. effects that might vary over time).[29]

As a result of its success in establishing a baseline level of trade between pairs of countries, measured by such things as overall fit and plausibility of the estimated parameters, the gravity model has also been widely used as a tool for evaluating the effects of a wide variety of policies (e.g. common currencies, free trade areas, patent rights). The basic idea is that the gravity model establishes the "natural" trade between pairs of countries and that any systematic variance left over must be accounted for by "unnatural" components that can be picked up by variables tapping those components. From the perspective of this note, we are particularly interested in the effect of contingent protection and membership in the WTO.

As the body of this note suggests, contingent protection can have a variety of effects on the trade of a country possessing such a mechanism: standard trade suppression of the (rather small number of) directly affected sectors; trade suppression as a result of firms seeking to avoid triggering an investigation; and any strategic effects. Since studies of the first set of effects yield economically small effects and the other two channels are

[29]Note that things like a common border, common language, distance, etc. are time invariant country pair fixed effects. A number of studies have emphasized the importance of country-pair fixed effects [i.e. the $(\alpha\beta)_{ij}$], including Glick and Rose (2002), Cheng and Wall (2005), and Egger and Pfaffermayr (2005), while Subramanian and Wei (2005) use the time varying country effects model. With the exception of Baltagi, Egger and Pfaffermayr (2003), these studies all use different mixes of both $\mathbf{x}_{ijt}$ and dummy variables. However, when Baltagi *et al*. compare specifications, they find that the most general specification cannot be rejected for the $\mathbf{x}_{ijt}$ and dataset they consider.

hard to study directly, the gravity approach seems ideal for those hoping to find larger effects. Thus, Vandenbussche and Zanardi (2005) apply the gravity model, as extended to include variables measuring adoption of a contingent protection mechanism and the intensity of its use. Specifically, their specification includes these variables, along with the standard components of the $\mathbf{x}_{ijt}$ vector, to get:

$$y_{ijt} = \mathbf{x}_{ijt}'\delta + \varphi_1 Adoption_{jt} + \varphi_2 Use_{jt} + \alpha_i + \beta_j + \gamma_t + \varepsilon_{ijt}$$

Note that the Use_{jt} variable is not Use_{ijt}—that is, this variable is use against anyone at time *t*, not against specific exporter *i*. This would seem to imply that the authors are fundamentally after the second and third effects, but not the first. While the authors find that neither adoption, nor use as measured by initiations of new cases, has any significant effect, they do find that use as measured by final measures adopted is significant. In fact, they calculate that each new application of antidumping measures reduces a country's total trade by 0.6%.[30] Given the question being asked, essentially "does protection reduce trade", the sign is not surprising, but the magnitude does seem suspiciously large.

Coming at this question from the other direction, we might ask whether *de jure* liberalization actually results in increased trade. The inference here would be: if a country that reduces statutory protection and adopts a contingent protection mechanism, also experiences increased trade, then it would be hard to argue that substitution exceeds unity. By contrast, if a country reduces statutory protection and adopts a contingent protection mechanism, and does not experience increased natural trade, it is at least possible that substitution is unity or greater. While we there does not appear to be any

[30] Since the average number of new measures per year per active new user is 4, this implies an annual reduction in exports to these countries of something like 2.4%, or $5 billion.

work asking precisely this question, there is work posing the question: does GATT/WTO membership result in liberalization. Unfortunately, the work here yields mixed results. Rose (2004a) estimates the following form:

$$y_{ijt} = \beta_0 + \mathbf{x}_{ijt}^{'}\delta + \varphi_1 Bothin_{ijt} + \varphi_2 Onein_{ijt} + \varphi_3 GSP_{ijt} + \varphi_4 FTA_{ijt} + \gamma_t + \varepsilon_{ijt}$$

The main result is that neither *Bothin* nor *Onein* have a significant effect on trade (surprisingly, the signs of these variables are even negative in many specifications).[31] These results seem potentially consistent with a substitution of unity. By contrast, Subramanian and Wei (2005), using a specification involving time-varying country fixed-effects as well as a design informed by GATT/WTO institutional detail, find evidence of liberalization by focussing on the sectors and countries that have experienced GATT/WTO sponsored liberalization. Relative to Vandenbussche and Zanardi's demonstration that protection reduces trade, Subramanian and Wei provide evidence that liberalization increases trade.

From the perspective of this note, none of this work is really asking quite the right question. We are less interested in whether protection reduces trade (it does), or liberalization increases trade (it does), than in whether this form of protection is better or worse than some relevant alternative. Since free trade (while obviously superior from most welfare perspectives) is an unlikely alternative, and since most countries substituted antidumping mechanisms for less constrained mechanisms as part of a liberalization process (Finger and Nogues, 2005), often involving membership in the WTO, what we really want to know is the net effect of reduced protection via the liberalization and

[31] Rose considers a number of alternative specifications but never finds a pattern consistent with the expected effects. In another paper, Rose (2004b) asks whether membership affects measures of trade policy, again ending up with negative results.

increased contingent protection. Ideally, we would like to compare levels of liberalization (or protection) with and without the presence of a contingent protection mechanism, and with and without multilateral disciplines. Unfortunately, while there are cases of liberalization without administered protection in place and countries that possess contingent protection mechanisms that do not liberalize, the former are rare and the latter are even rarer (especially if we consider actual acts of contingent protection).[32] Thus, empirical analysis of this question must seek identification in a more indirect way.

[32] Thus, the US possessed an antidumping law, more-or-less in its current form, since 1921, but while there were a suprising number of cases filed there were very few grants of protection either in the high tariff years running through the mid-1930s or during the early years of US led liberalization under the Reciprocal Trade Agreements Act of 1934 and the early GATT process (Irwin, 2005). Thus, on *a priori* grounds it would be hard to say what the relationship was in the US between the presence of an antidumping law and protection or liberalization.

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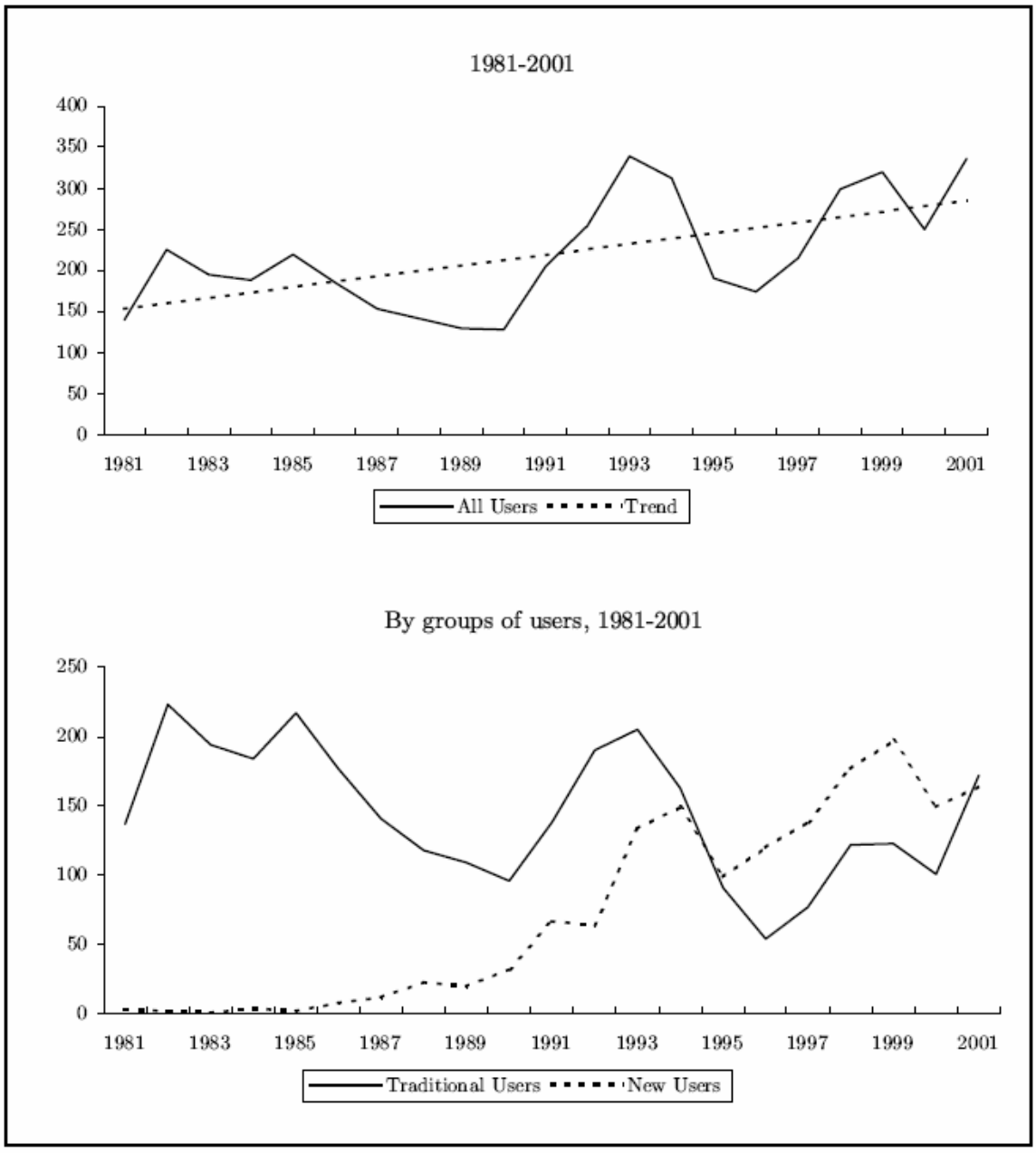
Table 1.1 International Use of Antidumping and the Global Antidumping Database

Country	Number of Antidumping Investigations, 1995-2004	Number of Antidumping Measures Imposed, 1995-2004
User-Countries in the Global Antidumping Database		
Argentina	192	139
Australia	172	54
Brazil	116	62
Canada	133	80
Colombia	23	11
European Union	303	193
India	400	302
Mexico	79	69
New Zealand	47	14
Peru	55	34
South Africa	173	113
South Korea	77	43
Turkey	89	77
United States	354	219
Venezuela	31	25
Subtotal	2244	1435
(share of total)	(84.8%)	(86.7%)
User-Countries not yet in the Global Antidumping Database		
China (since 2001)	99	52
Egypt	38	30
Indonesia	60	23
Israel	27	15
Malaysia	31	18
Taiwan (since 2000)	8	2
Thailand	34	23
Other WTO Members	105	58
Subtotal	402	221
(share of total)	(15.2%)	(13.3%)
Total	2646	1656

Source: Data for the initiations and measures used in this table is taken from WTO (2005a,b).

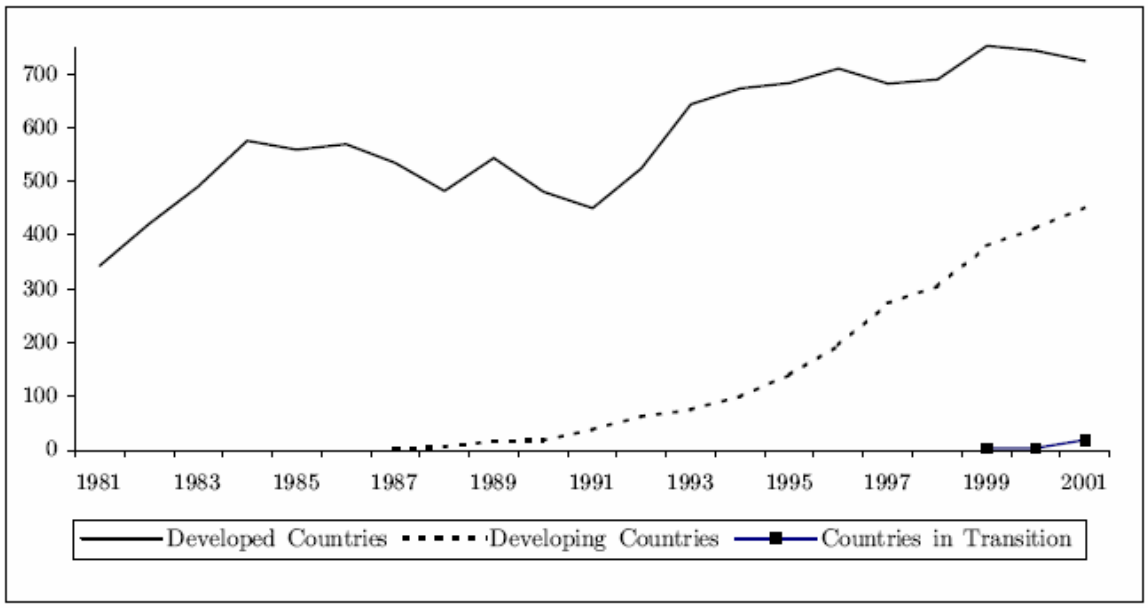
Source: Bown (2005)

Figure 1: Antidumping Investigations Initiated



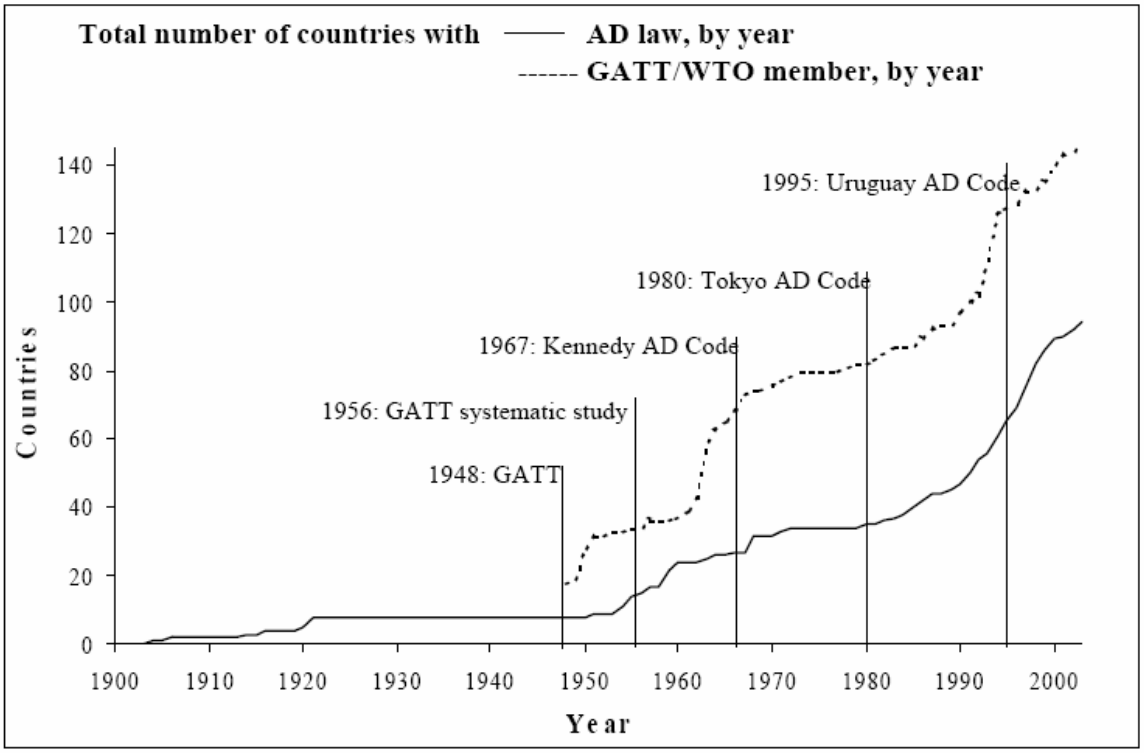
Source: Zanardi (2005)

Figure 2: Antidumping Measures in Force



Source: Zanardi (2005)

Figure 3: GATT/WTO Membership and Adoption of Antidumping Law



Notes: Bangladesh, Denmark, Kenya, and Sweden not included because of missing data.

Source: Zanardi (2005)

Table 2: Summary of WTO Members Submissions on Antidumping to the Doha Negotiating Group on Rules

1. SPECIFIC PROPOSALS		
ISSUES	QUESTIONS / PROPOSALS	PROPONENTS (WTO document number)
Determination of Dumping (Article 2)	Specify when sales of a like product in the market of the exporting country may be considered as not being in the *ordinary course of trade* by reason of ***price***, and thus excluded from the normal value calculation.	**FOA** (TN/RL/W/150, 04/16/04), **Canada** (TN/RL/W/1, 01/28/03)
	Modify the ***profitability test***, by exploring conditions under which sales made at a loss in the domestic market would not be excluded for purposes of determining normal values (the measures would be of particular importance in industries with pricing sensitive to supply and demand, or cyclical industries)	**Canada** (TN/RL/W/1, 01/28/03)
	What information to use for the *constructed value*?	**FOA** (TN/RL/W/150, 04/16/04), **FOA** (TN/RL/W/10, 06/28/02)
	Clarify the circumstances in which the authorities may reject or adjust cost data as maintained in the producers' own cost accounting records.	**FOA** (TN/RL/W/10, 06/28/02), **Canada** (TN/RL/W/1, 01/28/03)
	Amend Article 2.2.2 to provide that the three methods (i-iii) to consider administrative, selling and general costs, as well as profits, are in hierarchical order.	**India** (TN/RL/W/26, 10/17/02)
	Under the current guidelines for *constructed export price (CEP)* method, different practices are applied to different WTO members, which leads to abusive asymmetry deduction of costs and profits from CEP and normal value. Therefore, provide explicit rules for CEP.	**FOA** (TN/RL/W/10, 06/28/02)
	Price comparisons must reflect market realities, and particularly so in cyclical markets (e.g. perishable products cannot be put in inventory, and therefore must be sold at any price)	**FOA** (TN/RL/W/6, 04/26/02)
	Affiliated parties: Clarify definitions	**FOA** TN/RL/W/146
	Data requested from exporters: clarify what the investigator may request, when information exporters have requested may be set aside in favor of facts available.	**FOA** (TN/RL/W/150, 04/16/04)

Source: Finger and Zlate (2005)

ISSUES	QUESTIONS / PROPOSALS	PROPONENTS (WTO document number)
Determination of Injury (Article 3)	Develop the procedures and criteria utilized to analyze the ***causal relationship*** between dumping and injury and eliminate other factors	**FOA** (TN/RL/W/6, 04/26/02), **India** (TN/RL/W/26, 10/17/02)
	Clarify and improve the description of the factors to be considered to examine the impact of dumped imports on the domestic industry; distinguish injurious effects of other factors from those of dumping.	**Canada** (TN/RL/W/1, 04/15/02), **FOA** (TN/RL/W/6, 04/26/02), **FOA** (TN/RL/W/10, 06/28/02), **India** (TN/RL/W/26, 10/17/02)
	For the *cumulative injury assessment*, specify how to determine "***conditions of competition***" (e.g. when a product from more than one country, subject to simultaneous antidumping investigations, is used by distinct domestic users/industries)	**FOA** (TN/RL/W/6, 04/26/02), **Brazil** (TN/RL/W/7, 04/26/02)
	Additional information requirements for establishing **causal link**	**China** (TN/RL/W/66)
Definition of Domestic Industry (Article 4)	Clarify ***definition of the domestic industry*** (currently defined as (a) the domestic producers as a whole of the like products, or (b) those of them whose collective output constitutes major proportion of the total domestic production of such products)".	**FOA** (TN/RL/W/10, 06/28/02)
	Avoid arbitrarily broad definitions of the ***like product***.	**Brazil** (TN/RL/W/7, 04/26/02), **FOA** (TN/RL/W/10, 06/28/02), **Canada** (TN/RL/W/1, 01/28/03)
	Define "***affiliation***", and specify under which circumstances should affiliated party transaction prices in the domestic market be considered unreliable.	**FOA** (TN/RL/W/10, 06/28/02)
Initiation and Subsequent Investigation (Article 5)	Enhance that AD petitions need support of producers accounting for at least 50 percent of domestic production of like product.	**FOA** (TN/RL/W/10, 06/28/02), **India** (TN/RL/W/26, 10/17/02)
	Do not impose and collect duties when a *de minimis* margin is determined.	**Brazil** (TN/RL/W/7, 04/26/02)
	Lift the current de minimis level of 2 percent (to unspecified level)	**FOA** (TN/RL/W/6, 04/26/02), **Canada** (TN/RL/W/1, 01/28/03)
	Lift the current level of negligible trade volume of 3 percent (to unspecified level).	**FOA** (TN/RL/W/6, 04/26/02)
Evidence (Article 6)	Examine the "accuracy" and "adequacy" of evidence before initiating the investigation.	**FOA** (TN/RL/W/10, 06/28/02)
	When sampling exporters/producers, do not ignore information that reveals zero or *de minimis* AD rates for exporters outside the sample (the "***all others rate***").	**FOA** (TN/RL/W/10, 06/28/02)
	Prohibit "zeroing".	**FOA** (TN/RL/W/6, 04/26/02), **India** (TN/RL/W/26, 10/17/02)
	Enhance provisions for protection of confidential information.	**USA** (TN/RL/W/35, 12/03/02)
	Enhance provisions that national authorities should provide timely non-confidential information to interested parties, so that they can defend themselves. Members should maintain public record of non-confidential information.	**USA** (TN/RL/W/35, 12/03/02)
Price undertakings (Article 8)	Explain what "***satisfactory voluntary undertakings***" means.	**FOA** (TN/RL/W/10, 06/28/02), **India** (TN/RL/W/26, 10/17/02)

ISSUES	QUESTIONS / PROPOSALS	PROPONENTS (WTO document number)
Imposition and Collection of Antidumping Duties (Article 9)	ADA currently provides for the assessment of AD duties on either a retrospective or prospective basis; different assessment methodologies have fundamentally different effects on trade. Improve the matter.	**Canada** (TN/RL/W/1, 01/28/03)
	Make the lesser duty mandatory: limit the level of the measures to what is strictly necessary for removing the injury.	**FOA** (TN/RL/W/6, 04/26/02), **Brazil** (TN/RL/W/7, 04/26/02), **EC** (TN/RL/W/13, 07/08/02), **India** (TN/RL/W/26, 10/17/02)
	Establish detailed methodology for calculation of injury margins (currently, their calculation is not mandatory).	**India** (TN/RL/W/26, 10/17/02)
Retroactivity (Article 10)	Introduce provisions to allow return of AD duties where a DSB decision results in the measure being withdrawn	**Canada** (TN/RL/W/1, 01/28/03)
Duration and Review (Article 11)	"Avoid the unwarranted permanence of trade restrictions under the disguise of AD duties".	**Canada** (TN/RL/W/1, 04/15/02), **FOA** (TN/RL/W/6, 04/26/02), **Brazil** (TN/RL/W/7, 04/26/02), **FOA** (TN/RL/W/10, 06/28/02), **India** (TN/RL/W/26, 10/17/02), **Canada** (TN/RL/W/1, 01/28/03)
	No AD investigation shall be launched where a previous one ended with negative findings within 365 days prior to the filing.	**India** (TN/RL/W/26, 10/17/02)
	Avoid repeated dumping on the same product and country	**Canada** (TN/RL/W/1, 01/28/03)
	Sunset provisions: require a full investigation to extend	**Korea** TN/RL/W/111 05/27/03
	In situation of concurrent application of AD and Safeguard measures on the same product, the AD measure should be suspended or the duty adjusted.	**India** (TN/RL/W/26, 10/17/02)
	Review: apply requirements for an investigation to review	**FOA** TN/RL/W/83 25 April 2003
Judicial review (Article 13)	Members should provide detailed information on national legislations and regulations; each member should maintain judicial, arbitrator administrative tribunals or procedures for the purpose of prompt review of administrative actions related to final determinations and reviews.	**USA** (TN/RL/W/35, 12/03/02)
Developing economy members (Article 15)	Strengthen provisions allowing for special and differential treatment, technical assistance and capacity building, implementation issues.	**FOA** (TN/RL/W/6, 04/26/02), **FOA** (TN/RL/W/46, 01/24/02), **USA** (TN/RL/W/35, 12/03/02), **EC** (TN/RL/W/13, 07/08/02)
Consultation and Dispute Settlement (Article 17)	How can initiations be made subject to a swift DSU procedure?	**Canada** (TN/RL/W/1), **Canada** (TN/RL/W/1, 01/28/03)
	Swift Dispute Settlement mechanism	**EC** (TN/RL/W/13, 07/08/02)
	Codify recommendations and decisions of the DS Body	**Canada** (TN/RL/W/1, 01/28/03)

2. GENERAL PROPOSALS		
ISSUES	QUESTIONS / PROPOSALS	PROPONENTS
Transparency and procedural fairness		**Canada** (TN/RL/W/10), **EC** (TN/RL/W/13, 07/08/02), **Australia** (TN/RL/W/44, 01/24/03), **Canada** (TN/RL/W/1, 01/28/03) New Zealand TN/RL/W/137 07/15/03
Preserve efficiency of the instrument	Avoid circumvention of antidumping measures.	**EC** (TN/RL/W/13, 07/08/02)
Clarify and simplify the agreement	Clarify and simplify provisions according to findings of various Panel and Appellate Body Reports.	**EC** (TN/RL/W/13, 07/08/02)
	Prevent abusive and excessive AD measures, avoid excessive burdens on respondents, and enhance transparency, predictability and fairness of the system.	**FOA** (TN/RL/W/28, 11/22/02)
	Make verification procedures clearer concerning information submitted by exporters to the authorities.	**USA** (TN/RL/W/35, 12/03/02)
Public interest	Take the broader public interest into account.	**Canada** (TN/RL/W/1, 04/15/02), **FOA** (TN/RL/W/6, 04/26/02), **EC** (TN/RL/W/13, 07/08/02), **Canada** (TN/RL/W/1, 01/28/03)
Reduce the costs of investigations	Screen procedural aspects with a view to identify areas where changes can bring cost reductions while maintaining the quality of investigations	**EC** (TN/RL/W/13, 07/08/02), **USA** (TN/RL/W/35, 12/03/02)
ADA – ASCM harmonization		**Canada** (TN/RL/W/1, 01/28/03)